Supreme Court, U. S.
FILED
OCT 25 1977
JR., CLERK

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-502

STEPHEN MUSS, ET AL.,
Appellants,
vs.
CITY OF MIAMI BEACH, FLORIDA,
Appellee.

MOTION TO DISMISS

RICHARD KANNER, ESQ.
700 Brickell Avenue
Miami, Florida 33131
Attorney for Appellee

JOSEPH A. WANICK, ESQ.
City Attorney
1130 Washington Avenue
Miami Beach, Florida 33139

JOHN A. RITTER, ESQ.
250 Bird Road
Coral Gables, Florida 33146
Of Counsel

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-502

STEPHEN MUSS, ET AL.,
Appellants,

vs.

CITY OF MIAMI BEACH, FLORIDA,
Appellee.

MOTION TO DISMISS FOR LACK OF A SUBSTANTIAL FEDERAL QUESTION

Miami Beach enacted a rent control ordinance in December 1974 which was not extended when it expired by its own terms on December 31, 1976 (See *Miami Beach* v. *Herman*, 346 So.2d 122 (3 D.C.A. Fla. 1977)). The ordinance allows owners to maintain the higher of the rate of return earned prior to the ordinance or that rate of return earned in the community generally (Section 5B(3) and 5D).

The trial was held December 1975. No testimony was presented to remotely indicate the ordinance was confiscatory as to income or property values or administered

unfairly. The trial judge granted the city's motion for an involuntary dismissal at the conclusion of plaintiffs' case.

Since *Nebbia* v. *New York*, 291 U.S. 502, this Court has consistently approved non-confiscatory price fixing regulations without a showing of "emergency." See for example *Sunshine Coal Co.* v. *Adkins*, 310 U.S. 381 (coal prices); *West Coast Hotels Co.* v. *Parrish*, 300 U.S. 379 (state minimum wage law); *Olsen* v. *Nebraska*, 313 U.S. 236 (employment agency fees); *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179 (natural gas); *Mayo* v. *Lakeland Highlands Canning Co.*, 309 U.S. 310 (citrus fruit) and *Townsend* v. *Yeomans*, 301 U.S. 441 (tobacco factors).

The rationale of these cases is noted in *Ferguson* v. *Skrupa*, 372 U.S. 726, 730.

> It is now settled that States "have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or some valid federal law." * * * We refuse to sit as a "super legislature to weigh the wisdom of legislation," and we emphatically refuse to go back to the time when courts used the Due Process Clause "to strike down state laws, regulatory of business and industrial conditions because they may be unwise, improvident, or out of harmony with a particular school of thought."

Contentions identical in substance with those raised here regarding the need and purpose of the legislation were summarily rejected in *Brotherhood* v. *Chicago, R.I. & P. R. Co.*, 393 U.S. 129 and should be rejected here.

WHEREFORE, Appellee prays this case be dismissed for its failure to present a substantial federal question.

Respectfully submitted,

RICHARD KANNER, ESQ.
700 Brickell Avenue
Miami, Florida 33131
Attorney for Appellee

JOSEPH A. WANICK
City Attorney
1130 Washington Avenue
Miami Beach, Florida 33139

JOHN A. RITTER, ESQ.
250 Bird Road
Coral Gables, Florida 33146
Of Counsel